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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/823,049	03/30/2001	David F. Bantz	YOR920010074US1	1048

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EXAMINER

LIM, KRISNA

ART UNIT	PAPER NUMBER
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2153

DATE MAILED: 08/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/823,049

Applicant(s)

BANTZ ET AL.

Examiner

Krisna Lim

Art Unit

2153

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

Art Unit: 2153

1. Claims 1-24 are present for examination.
2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 6,769,075. Although the conflicting claims are not identical, they are not patentably distinct from each other because as following:

4. The present invention disclosed a method for operating a digital data processing system, comprising steps of:
- The Patent No. 6,769,075 disclosed a method for operating a digital data processing system, comprising steps of:

a) detecting an activation of a user input data that indicates that the system or a program executed by the system has become non-responsive to the user;	a) detecting an activation of a user input data that indicates that the system or a program executed by the system has become non-responsive to the user;
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b) determining an identification of any currently open files and programs with which currently open files are associated;	b) determining an identification of any currently open files and programs with which currently open files are associated;
c) determining an identification of those programs that are not normally in a non-responsive state;	c) determining an identification of those programs that are not normally in a non-responsive state; and
d) <u>transferring to a data storage</u> business entity, through a data communications network, <u>those currently open files that are associated with programs that are identified as being not normally in the non-responsive state</u> ; and e) <u>operating the data storage</u> business entity so <u>as to store the transferred files</u> .	d) <u>saving those currently open files that are associated with programs that are identified as being not normally in the non-responsive state</u> .

5. As to the preamble and the steps a) to c) of the present application and the patent, they are exactly the same; however steps d) and e) of the present application are not word by word identical to step d) of the patent. It would have been obvious, however, to one of ordinary skill in the art at the time the invention was made to recognize that such language, "transferring to a data storage ... and operating the data storage ... as to store the transferred files" in steps d) and e), of the present invention obviously is the same as of step d) "saving those currently open files" of the patent because the meaning of transferring to a data storage and operating the data storage as to store the transferred files is obviously similar to the meaning of saving files.

Art Unit: 2153

6. As to claims 2-10, they are identical to claims 2-10 of the patent.

7. As to claim 11,

The present invention disclosed

The Patent No. 6,769,075 disclosed

a digital data processing system,
comprising:

a digital data processing system,
comprising

At least one processing unit; a network interface for coupling said processing unit to a data communications network; a memory coupled to said processing unit; and a user interface bidirectionally coupled to said processing unit, said user interface comprising a button means for activation by a user for indicating that the system or a program executed by the system has become non-responsive to the user; and processing unit being responsive to a detection of the activation of said button means for determining an identification of any current open files and programs with which currently open files are associated, for determining an identification of programs that are not normally in a non-responsive state, and	At least one processing unit; a network interface for coupling said processing unit to a data communications network; a memory coupled to said processing unit; and a user interface bidirectionally coupled to said processing unit, said user interface comprising a button means for activation by a user for indicating that the system or a program executed by the system has become non-responsive to the user; and processing unit being responsive to a detection of the activation of said button means for determining an identification of any current open files and programs with which currently open files are associated, for determining an identification of programs that are not normally in a non-responsive state, and
For <u>transferring to a data storage</u> business entity, through a data communications network, <u>those</u>	<u>For saving those currently open files that are associated with programs that are identified as being not normally in</u>

Art Unit: 2153

<u>currently open files that are associated</u> <u>with programs that are identified as</u> <u>being not normally in the non-</u> <u>responsive state.</u>	<u>the non-responsive state.</u>
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8. As to the first row of the above table of the present application and the patent, they are exactly the same; however the second row of the present application are not word by word identical to the second row of the patent. It would have been obvious, however, to one of ordinary skill in the art at the time the invention was made to recognize that such language, "transferring to a data storage ... those currently open file ..." of the second row of the present invention obviously is the same as of the second row of the patent "saving those currently open files" of the patent because the meaning of transferring to a data storage ... those currently opened files is obviously similar to the meaning of saving those currently open files.

9. As to claims 12-17, they are identical to claims 12-17 of the patent.

10. As to claim 18,

The present invention disclosed

The Patent No. 6,769,075 disclosed

Computer readable data storage

Computer readable data storage

Medium for storing program instructions Medium for storing program instructions

For storing program instructions for execution by a processing unit of a digital data processing system that includes a memory coupled to said processing unit and a user interface bidirectionally coupled to said processing unit, wherein execution of	For storing program instructions for execution by a processing unit of a digital data processing system that includes a memory coupled to said processing unit and a user interface bidirectionally coupled to said processing unit, wherein execution of
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said program instructions causes said processing unit to be responsive to activation of a user interface input, that indicates that the system or a program executed by the system has become non-responsive to the user, for determining an identification of any currently open files and programs with which current open files are associated, for determining an identification of programs that are not normally in a non-responsive state, and	said program instructions causes said processing unit to be responsive to activation of a user interface input, that indicates that the system or a program executed by the system has become non-responsive to the user, for determining an identification of any currently open files and programs with which current open files are associated, for determining an identification of programs that are not normally in a non-responsive state, and
For <u>transferring over a data communication network those currently open files, that are associated with programs that are identified as being not normally in the non-responsive state, to a data storage business entity for storage, for notifying the user, with said user interface, that the currently open files has been transferred, and for subsequently retrieving the stored files from said data storage business entity.</u>	For <u>saving those currently open files that are associated with programs that are identified as being not normally in the non-responsive state, and for notifying the user, with said user interface, that the currently open files have been saved.</u>

11. As to the first row of the above table of the present application and the patent, they are exactly the same; however the second row of the present application are not word by word identical to the second row of the patent. It would have been obvious, however, to one of ordinary skill in the art at the time the invention was made to recognize that such language, "transferring to a data

Art Unit: 2153

storage ... those currently open file ...” of the second row of the present invention obviously is the same as of the second row of the patent “saving those currently open files” of the patent because the meaning of transferring to a data storage ... those currently opened files is obviously similar to the meaning of saving those currently open files.

12. As to claims 19-10, they are identical to claims 19-20 of the patent.

13. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

14. Claims 21-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Van Horne et al. [U.S. Patent No. 6,460,084].

15. Van Horne et al. disclose (e.g., see Figs. 1-6) the invention substantially as claimed. Taking claims 21-23 as exemplary claims, the reference discloses a method for operating a digital data processing system, comprising steps of:

a) detecting an activation of a user input (user request, Fig. 3) that indicates that the system or a program executed by the system has become non-responsive to the user; in response to detecting the activation of the user input, transferring to a data storage business entity, through a data communications network, selected user information (e.g., see the abstract, Fig. 3, col. 2 (lines 44-63), col. 4 (lines 37-67)); and operating the data storage business entity so as to store the transferred user information, and to subsequently retrieve and transfer back to

Art Unit: 2153

the digital data processing system at least some of the stored user information (e.g., see the abstract, Fig. 3, col. 2 (lines 44-63), col. 4 (lines 37-67)).

16. Van Horne et al. disclose (e.g., see Figs. 1-6) the invention substantially as claimed. Taking claim 24 as exemplary claim, the reference discloses a data storage business entity, comprising: a data communications network interface (a user graphical interface, the abstract) for coupling the data storage business entity to client (e.g., see the abstract, Fig. 3, col. 2 (lines 44-63), col. 4 (lines 37-67)) data processing system; and a controller, responsive to an arrival of information from a client data processing system, for storing the information and for subsequently retrieving and transferring at least some of the retrieved information back to the client data processing system, said controller being operable for charging the client data processing system for at least one of storing the user information, retrieving the stored information, or for being available to store and retrieve the user information (e.g., see the abstract, Fig. 3, col. 2 (lines 44-63), col. 4 (lines 37-67)).

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The references are cited in the Form PTO-892 for the applicant's review.

A shortened statutory period for response to this action is set to expire 3 (three) months and 0 (zero) days from the mail date of this letter. Failure to respond within the period for response will result in **ABANDONMENT** of the application (see 35 U.S.C 133, M.P.E.P 710.02, 710.02(b)).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Krisna Lim whose telephone number is (703) 305-9672. The examiner can normally be reached on Monday-Friday from 7:30 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Glenton Burgess, can be reached at (703) 305-4772.

Art Unit: 2153

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306

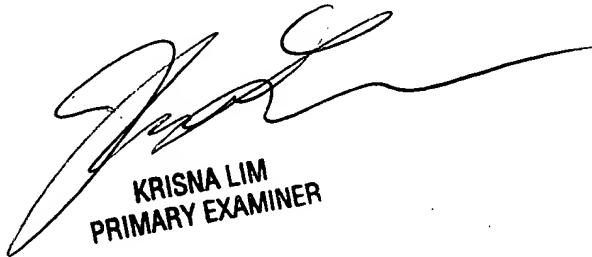
Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-9700

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [glen.burgess@uspto.gov].

All Internet e-mail communication will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirement of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Office Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

KI

August 7, 2004



KRISNA LIM
PRIMARY EXAMINER